

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON

OLIVIA SELTO, individually, as guardian  
of minor child K.P. and as Personal  
Representative of the Estate of KEVIN  
PETERSON JR, deceased, TAMMI BELL,  
individually and as Personal Representative  
of the Estate, and KEVIN PETERSON SR,  
individually,

Plaintiffs,

v.

COUNTY OF CLARK, a political  
subdivision of the State of Washington;  
SHERIFF CHUCK ATKINS; Sheriff's  
Detective ROBERT ANDERSON; Sheriff's  
Deputy JONATHAN FELLER; and JOHN  
and JANE DOES 1-10, in their official and  
personal capacities,

Defendants.

No. 3:22-cv-5384 BJR

SHERIFF CHUCK ATKINS' MOTION  
FOR SUMMARY JUDGMENT

NOTE OF MOTION CALENDAR:

SEPTEMBER 30, 2022  
WITHOUT ORAL ARGUMENT

**I. INTRODUCTION AND SUMMARY OF ARGUMENT**

The Plaintiffs sued Sheriff Atkins personally. They claim he failed to train his officers and failed to enact policies to prevent unconstitutional shootings. There is no evidence to support these claims. The case against the Sheriff should be dismissed.

**II. STATEMENT OF FACTS**

Chuck Atkins is the elected Sheriff of Clark County. Dec. of Atkins. He has been with

1 the Sheriff's Department for 41 years.

2 All of the Sheriff's deputies are fully trained by the Criminal Justice Training  
3 Commission. *Id.* They complete the full course at the CJTC, and then receive additional field  
4 training before assuming all duties. *Id.* They also operate under policies adopted by the  
5 Sheriff. *Id.*

6 As it relates to use of force, the Clark County Sheriff's Office follows state and federal  
7 law for use of such force. *Id.* The policy is 14 pages long and covers all aspects of legal force.  
8 *Id.* There is no evidence that the policy is illegal.

9 Similarly, there is no evidence that there is an unwritten practice of using illegal and  
10 unconstitutional deadly force. Plaintiffs can produce no such evidence.

### 11 III. LAW AND ARGUMENT

12 Plaintiffs claim that Sheriff Atkins is liable because he was negligent in his training  
13 and supervision of his employees. ECF #1, p. 7. They claim that Sheriff Atkins is liable under  
14 Section 1983 for having a policy or practice of allowing unconstitutional uses of force. *Id.* p.  
15 9.

16 There is no respondeat superior liability under § 1983, and thus Sheriff Atkins cannot  
17 be held liable based solely on his position as Clark County Sheriff. See, *Hansen v. Black*, 885  
18 F.2d 642, 645–46 (9th Cir.1989); *Fuller v. Cnty. of Orange*, 276 Fed. Appx. 675, 678 (9th  
19 Cir. 2008). “Supervisory liability can exist if [the Sheriff] implemented ‘a policy so deficient  
20 that the policy itself is a repudiation of constitutional rights and is the moving force of the  
21 constitutional violation.’” *Mackinney v. Nielsen*, 69 F.3d 1002, 1008 (9th Cir. 1995).

22 Here, there is no evidence that the Sheriff's Use of Force policy is either  
23 unconstitutional or the “moving force” for any unconstitutional act. Accordingly, there can  
24 be no liability.

1 DATED: September 8, 2022

2 KEATING, BUCKLIN & McCORMACK, INC., P.S.

3  
4 By: /s/ Andrew Cooley

5 Andrew Cooley, WSBA #15189

6 Attorneys for Defendants, County of Clark, Sheriff  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 8, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED: September 8, 2022

/s/ Andrew Cooley

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